



General Assembly

**Substitute Bill No. 6741**

January Session, 2017



**AN ACT CONCERNING THE RIGHT OF COUNSEL TO ACCESS  
RECORDS IN CERTAIN ABUSE AND NEGLECT PROCEEDINGS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46b-129a of the general statutes is repealed and  
2 the following is substituted in lieu thereof (*Effective October 1, 2017*):

3 In proceedings in the Superior Court under section 46b-129:

4 (1) The court may order the child, the parents, the guardian, or other  
5 persons accused by a competent witness of abusing the child, to be  
6 examined by one or more competent physicians, psychiatrists or  
7 psychologists appointed by the court;

8 (2) (A) A child shall be represented by counsel knowledgeable about  
9 representing such children who shall be assigned to represent the child  
10 by the office of Chief Public Defender, or appointed by the court if  
11 there is an immediate need for the appointment of counsel during a  
12 court proceeding. If the child's parent or guardian has been accused by  
13 a competent witness of abusing the child, or of causing the child to be  
14 neglected or uncared for, upon the assignment or appointment of  
15 counsel, any party may file a motion to request the court to enter an  
16 order granting such party immediate access to (i) records relating to  
17 the child, including, but not limited to, Department of Social Services  
18 records and medical, mental health and substance abuse treatment,

19 law enforcement and educational records, without the necessity of  
20 securing further releases, and (ii) the child, for the purpose of  
21 consulting with the child privately. The court shall give the parties  
22 prior notice of such assignment or appointment. Counsel for the child  
23 shall act solely as attorney for the child.

24 (B) If a child requiring assignment of counsel in a proceeding under  
25 section 46b-129 is represented by an attorney for a minor child in an  
26 ongoing probate or family matter proceeding, the court may appoint  
27 the attorney to represent the child in the proceeding under section 46b-  
28 129, provided (i) such counsel is knowledgeable about representing  
29 such children, and (ii) the court notifies the office of Chief Public  
30 Defender of the appointment. Any child who is subject to an ongoing  
31 probate or family matters proceeding who has been appointed a  
32 guardian ad litem in such proceeding shall be assigned a separate  
33 guardian ad litem in a proceeding under section 46b-129 if it is deemed  
34 necessary pursuant to subparagraph (D) of this subdivision.

35 (C) The primary role of any counsel for the child shall be to  
36 advocate for the child in accordance with the Rules of Professional  
37 Conduct, except that if the child is incapable of expressing the child's  
38 wishes to the child's counsel because of age or other incapacity, the  
39 counsel for the child shall advocate for the best interests of the child.

40 (D) If the court, based on evidence before it, or counsel for the child,  
41 determines that the child cannot adequately act in his or her own best  
42 interests and the child's wishes, as determined by counsel, if followed,  
43 could lead to substantial physical, financial or other harm to the child  
44 unless protective action is taken, counsel may request and the court  
45 may order that a separate guardian ad litem be assigned for the child,  
46 in which case the court shall either appoint a guardian ad litem to  
47 serve on a voluntary basis or notify the office of Chief Public Defender  
48 who shall assign a separate guardian ad litem for the child. The  
49 guardian ad litem shall perform an independent investigation of the  
50 case and may present at any hearing information pertinent to the  
51 court's determination of the best interests of the child. The guardian ad

52 litem shall be subject to cross-examination upon the request of  
 53 opposing counsel. The guardian ad litem is not required to be an  
 54 attorney-at-law but shall be knowledgeable about the needs and  
 55 protection of children and relevant court procedures. If a separate  
 56 guardian ad litem is assigned, the person previously serving as counsel  
 57 for the child shall continue to serve as counsel for the child and a  
 58 different person shall be assigned as guardian ad litem, unless the  
 59 court for good cause also determines that a different person should  
 60 serve as counsel for the child, in which case the court shall notify the  
 61 office of Chief Public Defender who shall assign a different person as  
 62 counsel for the child. No person who has served as both counsel and  
 63 guardian ad litem for a child shall thereafter serve solely as the child's  
 64 guardian ad litem.

65 (E) The counsel and guardian ad litem's fees, if any, shall be paid by  
 66 the office of Chief Public Defender unless the parents or guardian, or  
 67 the estate of the child, are able to pay, in which case the court shall  
 68 assess the rate the parent or guardian is able to pay and the office of  
 69 Chief Public Defender may seek reimbursement for the costs of  
 70 representation from the parents, guardian or estate of the child;

71 (3) The privilege against the disclosure of communications between  
 72 husband and wife shall be inapplicable and either may testify as to any  
 73 relevant matter; and

74 (4) Evidence that the child has been abused or has sustained a  
 75 nonaccidental injury shall constitute prima facie evidence that shall be  
 76 sufficient to support an adjudication that such child is uncared for or  
 77 neglected.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2017	46b-129a

**KID***Joint Favorable Subst.*

***JUD***      *Joint Favorable*